



March 19, 2014

The Honorable Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

As Attorneys General of very diverse states, we write to express our continuing support of your efforts to enact bipartisan patent reform legislation. Congress has long recognized that patents deserve special protections. It is clear from our perspective in the states, however, that the patent system is out of balance.

We have received many complaints about unfair and deceptive efforts to license and enforce patents. The targeted companies, including small business, start-ups, and nonprofits, face an impossible choice: pay an expensive and unwarranted licensing fee or risk financially disastrous litigation. Many pay the licensing fee not because the claim has merit but because any alternative is too expensive. These distorted incentives have caused a significant increase in meritless patent enforcement activity.

We have responded to complaints from our constituents by launching investigations and bringing enforcement actions against so-called patent trolls. Based on our experience, we recognize the importance of pending federal legislation addressing patent litigation reform. Changes are needed to create an environment in which abusers of the patent enforcement system cannot thrive.

One important reform to achieve this objective is to give courts greater ability to shift legal fees in appropriate cases. To this end, Vermont and Nebraska drafted an amicus brief in *Octane Fitness, LLC v. Icon Health & Fitness, Inc.* before the Supreme Court this term, advocating for a more reasonable interpretation of the current “exceptional” case standard. We were joined by a bipartisan group of 28 additional states. Notwithstanding these efforts, we believe that Congress is in the best position to address the issue directly

and adopt a fee-shifting standard that discourages bad faith infringement assertions and litigation.

A number of pending proposals would accomplish the goal of balanced fee-shifting. Indeed, H.R. 3309, the Innovation Act, includes a balanced fee shifting provision and was approved by the House with a resoundingly bipartisan vote. We believe that a two-way, party-neutral provision that provides for fee-shifting when a party's position or conduct is not reasonably justified in law or fact would provide a critical incentive to deter meritless claims while also protecting legitimate enforcement rights.

In addition, as stated in our February 24, 2014 letter to Congress, of primary importance to the states is clarification of state-court jurisdiction of bad-faith demand letters. Federal legislation should confirm that state courts have personal jurisdiction over entities that direct unfair or deceptive patent demand letters into the state.

Again, thank you for your continuing leadership in maintaining the quality and effectiveness of our patent system. We look forward to working with you in the effort to deter the bad actors who are exploiting the system for undeserved gain.

Sincerely,



Jon Bruning  
Attorney General  
State of Nebraska  
2115 State Capitol  
Lincoln, NE 68509  
402-471-2682



William H. Sorrell  
Attorney General  
State of Vermont  
109 State Street  
Montpelier, VT 05609  
802-828-3171

cc: The Honorable Harry Reid, Majority Leader, United States Senate  
The Honorable Mitch McConnell, Minority Leader, United States Senate